IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated 16..11..2007
Coram:
The Hon'ble Mr. Justice K.CHANDRU
W.P. Nos.18612 and 20255 of 2000, 380
and 640 of 2001 and 11991 of 2002

1. D.Purushothaman
2. K.Kuppachari
3. G.Jagadeesan
4. R.Manikam
5. G.Ethiraj
6. B.Sivalingam
7. K.Bhaskaran .. Petitioners in W.P. No.18612 of 2000
1. N.Kallappan
2. A.Govindasamy
3. M.S.Lakshminarayanan
4. D.Jyothi
5. S.Raman
6. M.Shanmugam
7. P.Dayanidhi
8. K.L.Narasimhan .. Petitioners in W.P. No.20255 of 2000
1. S.Sadasivam
2. R.Kalyanaraman
3. M.V.Mukundaraman
4. P.Gopi
5. S.Ramakrishnan
6. C.N.Malupillai
7. V.Raghavan
8. T.R.Raghu
9. N.Thirunavukarasu
10. M.Balasubramanian
11. S.Krishnan
12. S.Ramamurthy
13. S.Sarada
14. S.Sankaralingam
15. V.N.Srinivasaraghavan
16. Md.Sulaiman .. Petitioners in W.P. No.380 of 2001
V.S.Elango .. Petitioner in W.P. No.640 of 2001

Chennai Dock Labour Board
Employees' Progressive Union
Regd. No. 2294, MDS
Rep. by its General Secretary
N.Mahadevan .. Petitioner in W.P. No.11991 of 2002

vs.

1. The Government of India

Rep. by Secretary to Government
Ministry of Surface Transport
New Delhi .. R1 in W.P. Nos.18612 & 20255 of 2000, 380 of 2001 and 11991 of 2002 & R2 in W.P. No. 640 of 2001

2. Chennai Port Trust
Rep. by its Chairman
Chennai .. R1 in W.P. No. 640 of 2001 and R1
in W.P. Nos.18612 & 20255 of 2000, 380 of 2001 and 11991 of 2002

3. The Secretary
Chennai Port Trust
Chennai .. R3 in W.P. No.640 of 2001

4. The Financial Advisor &
The Chief Accounts Officer
Chennai Port Trust
Chennai .. R4 in W.P. No.640 of 2001

W.P. Nos. 18612 and 20255 of 2000 filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified Mandamus calling for the records relating to the resolution No.72 (Item No.12 on the agenda) of the meeting No.4 of the year 2000-2001 dated 31.8.2000 and resolution No. 133 of Meeting No. 7 of the year 2000-2001 of the Board of Trustees of the second respondent relating to the reduction of the age of superannuation for the employees of the second respondent from 60 to 58 and quash the same and forbear the respondents from giving effect to any such amendment or change.

W.P. No. 380 of 2001 filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified Mandamus calling for the records of the first respondent in D.O. No.PR 12016/12/2000-PE1 dated 17.4.2000 and quash the same and consequently call for the records of the second respondent relating to resolution No.72 dated 31.8.2000 and resolution No. 133 dated 24.11.2000 with reference to the rolling back the age of retirement of the employees of the second respondent and quash the same and direct the second respondent not to amend the Rule 3 of the Madras Port Trust Employees' Retirement Regulations 1976 until FR 56 is amended.

W.P. No. 640 of 2001 filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorari calling for the records of the second respondent connected with the notification dated 05.01.2001 approving the amendment of Port Trust Employees' (Retirement Amendment) Regulation 2000 wherein the retirement age of the employees of the Port Trust was reduced from 60 years to 58 years and quash the approval of the amendment.

W.P. No. 11991 of 2002 filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorarified Mandamus calling for the records relating to the letter dated 08.3.2001 in reference No. 622/98-A3 dated 08.3.2001, consequentially the Note No. 18/2002 P4 dated 02.02.2002 on the file of the second respondent, quash the same and directing the second respondent to permit the Members of the petitioner's union till they are attaining age of 60 years.

W.P. Nos. 18612 and 20255 of 2000:
For Petitioners : Mrs. AL. Gandhimathi

For Respondent 1 : Mr. T.S.Sivagnanam, ACGSC

For Respondent 2 : Mr. G.Venkatarakan,
for Mr.R. Arumugam

W.P. No. 380 of 2001:

For Petitioners : Ms. Chitra Sampath

For Respondents 1&2 : Mr. K. Rajendran, SCGSC

W.P No.640 of 2001:

For Petitioner : Mr.S.Kumar, SC
for Mr.R.Loganathan

For Respondents 1&2 : Mr. K. Rajendran, SCGSC

For Respondents 3&4 : Mr. G.Venkatarakan,
for Mr.R. Arumugam

W.P. No. 11991 of 2002:

For Petitioner : Mr.S.Doraisamy

For Respondent 1 : Mrs. Meera Gupta, ACGSC

For Respondent 2 : Mr. G.Venkatarakan,
for Mr. V. Kalyanaraman

C O M M O N O R D E R

In W.P. No. 18612 of 2000, there are 7 petitioners and in W.P. No. 20255 of 2000, there are 8 petitioners and they are all working in the Chennai Port Trust, belonging to non-workmen category. The challenge in these two petitions is to item No.12 on the agenda of Resolution No. 72 passed in Meeting No.4 of the year 2000-2001 dated 31.8.2000 and Resolution No. 133 of Meeting No. 7 of the year 2000-2001 of the Board of Trustees of the second respondent relating to the reduction of the age of superannuation for the employees of the second respondent Port Trust from 60 to 58 years.
2. According to the petitioners, originally, when they entered into service, the Service Regulations provided that the employees will get their superannuation on attaining the age of 58 years. Subsequently, by an amendment made to the Regulations with effect from 31.5.1998, the age of superannuation was increased from 58 to 60 years. Excepting the eighth petitioner in W.P. No. 20255 of 2000, all the other petitioners were continuing the service on the basis of the amended Regulations. However, once again, the Port Trust rolled back the age of retirement from 60 to 58 years by their meeting held on 31.8.2000 and the age of superannuation was reduced with effect from 01.12.2000. The amended Regulations was sent for approval by the first respondent Union of India by virtue of Section 28 of the Major Port Trusts Act. It is at this stage, W.P. Nos. 18612 and 20255 of 2000, have been filed.

3. In W.P. No. 380 of 2001, there are 16 petitioners challenging the roll back of age of retirement from 60 to 58 years.
4. In W.P. No. 640 of 2001, there is only one petitioner,who again challenges the Resolution No.133 of the Chennai Port Trust dated 30.11.2000.

5. In W.P. No. 11991 of 2002, the petitioner is the Chennai Dock Labour Board Employees' Progressive Union, represented by the General Secretary, challenging the letter dated 08.3.2001 as well as Note dated 02.02.2002 by which the retirement age has been rolled back from 60 to 58 years.

6. I have heard the arguments of Mrs. AL. Gandhimathi, learned counsel appearing for the petitioner, Mr. T.S.Sivagnanam, learned Additional Central Government Standing Counsel representing the first respondent and Mr. G.Venkatarakan leading Mr.R. Arumugam, learned counsel appearing for the second respondent Port Trust in W.P. Nos. 18612 and 20255 of 2000 and for the respondents 3 and 4 in W.P. No. 640 of 2001, Ms. Chitra Sampath, learned counsel appearing for the petitioner W.P. No. 380 of 2001 and Mr. K. Rajendran, learned Senior Central Government Standing Counsel appearing for the respondents in W.P. Nos. 380 and 640 of 2001, Mr. S. Kumar, learned Senior Counsel leading Mr. R. Loganathan, counsel appearing for the petitioner in W.P No.640 of 2001 and Mr. S. Doraisamy, counsel for the petitioner, Mrs. Meera Gupta, learned Additional Central Government Standing Counsel representing the first respondent and Mr. G.Venkatarakan, leading Mr. V. Kalyanaraman, learned counsel appearing for the second respondent in W.P. No. 11991 of 2002 and have perused the records.

7. In the present batch of cases, some of the petitioners are workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 [for short, 'I.D. Act'] and their service conditions are governed by the Certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946.

8. It is an admitted fact that originally, the age of superannuation was 58 years and pursuant to the policy of the Government as well as the recommendations of the Fifth Pay Commission, the age of retirement of the Central Government employees was increased to 60 years. All the Public Sector Undertakings including major Port Trusts were given the liberty to increase the retirement age as 60 years. Therefore, the Chennai Port Trust, in exercise of the power conferred under Section 28 of the Major Port Trusts Act, 1963 [for short, 'Act'], amended the Regulations and increased the age of retirement as 60 years. Correspondingly, the Certified Standing Orders were also amended by bringing the age of retirement on par with the other employees, viz., 60 years.

9. However, due to a change of policy by the Central Government, once again, all the Public Sector Corporations and Statutory Boards were given power to roll back the age of retirement to 58 from 60 years. The Chennai Port Trust also accordingly, rolled back the age of retirement by the impugned Resolution passed by the Board of Trustees and the age of superannuation was reduced to 58 years. In the light of the change in the statutory Regulations, even the Certified Standing Orders were also amended.

10. The first submission of the learned counsel appearing for the petitioners is that the service conditions of the petitioners, being employees came from the Central Government service, are covered by Section 29(f) of the Act. Therefore, it cannot be altered. Section 29(f) of the Act states that the employees' services were taken up on the terms and conditions of service, unless and until the service was altered by the Board. Even otherwise, as per Section 28(c) of the Act, the Board has also been empowered to alter the terms and conditions of service of persons, who become subsequently employees of the Board, in terms of Section 29(1)(f) of the Act. Therefore, this

argument does not hold good.

11. The second submission of the learned counsel appearing for the petitioners is that Section 9-A of the I.D. Act is attracted. Therefore, inasmuch as the Board had not given any notice to all the employees in terms of Section 9-A of the I.D. Act, the challenge made by them is illegal. Some of the petitioners are not workmen and, therefore, they do not have the protection in terms of the I.D. Act. Even assuming that such provisions are covered by the I.D. Act and requires a notice under Section 9-A of the I.D. Act, the question has to be answered against them. Though Section 9-A of the I.D. Act contemplates 21 days notice, the proviso to the said Section clearly states that if there are statutory regulations, no notice is required. The only criteria is that those statutory Regulations have to be published in the Government Gazette. As stated already, the amendments have been published in the Government Gazette and hence, the question of any notice being given under Section 9-A does not arise.

12. In the present case, even the Certified Standing Orders were also amended in tune with the Service Regulations. Even though a contention was raised that the workers were not given individual notice as required under law for amending the Standing Orders, no appeal was filed by any workman against the Certified Standing Orders. As such, it has become final. Therefore, such a plea cannot be raised for the first time before this Court.

13. Even though the matters were argued at length and several decisions were cited by both sides, it is enough to refer to the decisions rendered by various High Courts with reference to the roll back of age of retirement in respect of various Port Trusts functioning under the Major Port Trusts Act.

14. The Orissa High Court dealt with a similar question in respect of the workmen of Paradip Port Trust in an unreported judgment in a batch of cases in CJC 13265 of 2000, etc., disposed on 21.3.2001 and a learned Judge of the Orissa High Court upheld the roll back in retirement age of employees of the Port Trust. (See Narayan Chandrasahoo and others v. Union of India and others).

15. Further, a Division Bench of the Bombay High Court (presided by the Hon'ble Justice A.P. Shah, as he then was) in a matter relating to the Bombay Port Trust, by its judgment dated 30.01.2001, repelled the contentions of the workmen advanced against the roll back in retirement age. [See W.P. No. 719 of 2000 (Transport and Dock Workers' Union v. Board of Trustees of the Port of Bombay)].

16. Subsequently, in a judgment reported in 2002 (III) L.L.J. 1098 relating to Calcutta Port Shramik Union and others v. Board of Trustees of Calcutta Port and others], the Calcutta High Court has also upheld the decision of the Port Trust in rolling back the age of retirement of its employees. If that is the State of the Law for three Major Ports, the petitioners, by no stretch of imagination, can advance fancy arguments to take a different view in respect of the Chennai Port alone. This Court is not persuaded to take a different view.

17. Under the above circumstances, the objections raised by the petitioners with reference to the impugned Resolution does not stand to reason. Similar view was taken by this Court in W.P. (MD) No. 8162 of 2005, etc. batch cases, vide common order dated 09.7.2007 in respect of S. Perumal v. The Government of India and others relating to Tuticorin Port Trust. Therefore, no different view can be taken in respect of the Chennai Port Trust.

18. In the light of the above, all the writ petitions fail and deserve to be dismissed. Accordingly, they are dismissed. However, there will be no order as to costs.

Index : Yes 16..11..2007
Internet : Yes
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To

1. The Secretary to Government
Government of India
Ministry of Surface Transport
New Delhi

2. Chennai Port Trust
Rep. by its Chairman
Chennai

3. The Secretary
Chennai Port Trust
Chennai

4. The Financial Advisor &
The Chief Accounts Officer
Chennai Port Trust
Chennai

K.CHANDRU, J.

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Pre-Delivery Common order in

W.P. Nos.18612 of 2000, etc. batch

Delivered on
16..11..2007